

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

TREE TOP, INC., a Washington  
corporation,  
Plaintiff,

v.

NATURIFE FOODS, LLC, a Delaware  
domestic limited liability company,  
Defendant.

CASE NO.: 1:14-CV-3103-TOR

PROTECTIVE ORDER

BEFORE THE COURT is the parties' stipulation for entry of a protective order (ECF No. 26). The parties represent that certain information in this matter may be disclosed which may contain proprietary, confidential, private, technical, trade secret or otherwise non-public information. To protect such information from unauthorized disclosure the parties stipulate as follows:

**1. Definitions. As used in this Protective Order:**

a. The term "Material" means any written, reported, or graphic matter, however stored, produced, or reproduced, including, but not limited

1 to, testimony at depositions upon oral examination or upon written  
2 questions, answers to interrogatories, information obtained from the  
3 inspection of premises, tangible objects, or documents, answers to requests  
4 for admission, and anything that is a “writing” under Rule 1001, Federal  
5 Rules of Evidence, and includes information set forth in responses to  
6 discovery requests, and deposition testimony, and any Material produced  
7 during discovery or otherwise.

8 b. The term “Provides” means the production, delivery, or transfer  
9 of any material, voluntarily or involuntarily, regardless of whether it is  
10 performed pursuant to a request or subpoena.

11 c. The term “Action” means the case entitled *TREE TOP, INC., a*  
12 *Washington corporation, Plaintiff, vs. NATURIFE FOODS, LLC, a*  
13 *Delaware domestic limited liability company, Defendant*, United States  
14 District Court Eastern District of Washington, Case No. 1:14-CV-03103-  
15 TOR.

16 d. The term “Confidential Information” means all Materials, items,  
17 testimony, or information provided, produced, or conveyed by any party in  
18 connection with this Action that constitutes or discloses trade secrets  
19 regarding TREE TOP, INC., a Washington corporation; NATURIFE  
20 FOODS, LLC, a Delaware domestic limited liability company and/or

1 information that the party determines or designates as confidential, private,  
2 proprietary, or trade secret.

3 e. The term “Defendant” shall mean Defendant, NATURIFE  
4 FOODS, LLC, a Delaware domestic limited liability company and includes  
5 the Defendant’s current and former employees, agents, managers, officers,  
6 and directors.

7 f. “Plaintiff” shall mean TREE TOP, INC., a Washington  
8 corporation, and includes the Plaintiff’s current and former employees,  
9 agents, managers, officers, and directors.

10 **2. Designation of Confidential Material.**

11 a. Any party who provides any Materials or information which  
12 contains Confidential Information may designate such Material as  
13 confidential at the time of production by stamping or affixing the Material  
14 with the following legend:

15 **“CONFIDENTIAL”**

16 b. Information disclosed during depositions may be designated as  
17 Confidential Information on the record at the deposition.

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1           **3. Designation after Production.**

2           Any party may designate as confidential any Material that the party  
3 previously produced or disclosed without such designation or within 20 days of the  
4 execution of this Order by the Court, whichever occurs later. Any party may  
5 designate Materials as confidential by sending written notice of the designation and  
6 copies of the Material marked confidential to all persons in possession of the  
7 previously undesignated copies. Any party receiving the notice shall return to the  
8 designating party all undesignated copies of the Material, or shall designate all  
9 such copies in their possession. All Material produced by any party will be treated  
10 as confidential for the 20-day period after production to permit the party to seek  
11 protection for any Material.

12           **4. Challenge to Confidentiality Designation.**

13           Any party who disagrees with a designation of confidentiality may, after  
14 attempting in good faith to resolve the dispute informally, apply to the Court for a  
15 ruling that a document or information is not entitled to such status and protection.  
16 Any motion filed with the Court relating to documents or information shall be filed  
17 in the manner prescribed by Paragraph 9 below.

18           **5. Confidentiality of Designated Material.**

19           Material designated as confidential shall not be used for any purpose other  
20 than the prosecution or defense of this Action. Confidential Information shall only

1 be delivered, exhibited, or disclosed to the following persons:

2 a. The named parties to this Action, including their current and  
3 former directors, officers, agents, and employees;

4 b. Counsel for the named parties to this Action, and personnel  
5 employed by counsel who are assisting in the prosecution or defense of the  
6 Action;

7 c. Outside experts, consultants, or investigators retained by the parties  
8 to assist in connection with this litigation under the conditions described in  
9 Paragraph 6(a) below;

10 d. The United States District Court, Eastern District of Washington  
11 and its personnel, or other persons acting on its behalf, in accordance with  
12 the provisions of Paragraph 9 below;

13 e. Stenographic reporters engaged for proceedings in connection with  
14 this action, and their staff, provided that the reporters and their staff have  
15 executed a copy of the "Agreement to be Bound by Protective Order"  
16 attached hereto as Exhibit "A"; and

17 f. Any mediator retained by the parties in this action, provided that  
18 the mediator executes a copy of the "Agreement to be Bound by Protective  
19 Order" attached hereto as Exhibit "A".

20 g. Any deposition, trial, or hearing witness in the Action who

1 previously has had access to the specified documents or who has otherwise  
2 acted as an agent, employee, consultant, or advisor to the party that produced  
3 the documents, materials, or information.

4 **6. Disclosure of Confidential Information to Experts, Consultants,**  
5 **Investigators, and Third Party Witnesses**

6 a. Disclosure of Confidential Information to Experts, Consultants and  
7 Investigators: Before a receiving party discloses a conveying party's  
8 Confidential Information to any expert, consultant or investigator, the  
9 expert, consultant, or investigator must certify that he or she has read this  
10 Protective Order and must sign a copy of the "Agreement to be Bound by  
11 Protective Order" attached as Exhibit "A". Once a person has executed the  
12 Agreement to be Bound by Protective Order, it shall not be necessary for  
13 that person to sign a separate agreement each time he or she is subsequently  
14 given access to Confidential Information. An expert or consultant who is  
15 shown Confidential Information may retain copies of the Confidential  
16 Information subject to the provisions of Paragraph 7 below.

17 b. Retention of Agreements: The original, executed Agreement to be  
18 Bound by Protective Order signed by persons receiving Confidential  
19 Information pursuant to Paragraph 6 shall be maintained by the attorney of  
20 record who obtained the agreement.

1           **7. Completion of Litigation.**

2           Upon the completion of all proceedings in this Action, including the  
3 expiration of all rights to judicial review, all Confidential Information shall either:  
4 (1) be tendered back to the person who produced it; or (2) be destroyed. The  
5 parties are not required to return or destroy any pleadings, discovery requests,  
6 documents filed with the Court, or attorney work-product. The provisions of this  
7 Protective Order restricting the dissemination, exhibition, or other use of  
8 confidential Material shall continue to be binding on any person subject to the  
9 terms of this Protective Order after the conclusion of this Action.

10           **8. Right to Seek Relief from the Court.**

11           Nothing in this Protective Order shall be deemed to limit, prejudice, or  
12 waive any right of any party or person: (I) to resist or compel discovery with  
13 respect to, or to seek to obtain additional or different protection for, Material  
14 claimed to be protected by work product or any applicable privilege, Material as to  
15 which the person or party claims a legal obligation not to disclose, or Material not  
16 required to be produced pursuant to governing laws and rules; (ii) to seek to  
17 modify or obtain relief from any aspect of this Protective Order; (iii) to object to  
18 the use, relevance, or admissibility at trial of any evidence, whether or not  
19 comprised of Confidential Information governed by this Protective Order; (iv)  
20 otherwise to require that discovery be conducted according to governing laws and

1 rules; or (v) to oppose production of any information on any ground allowed under  
2 the Federal Rules of Civil Procedure, or any other state or federal law, rule, or  
3 regulation.

4 **9. Filing Confidential Documents with the Court.**

5 Any party filing a document or thing with the Court that contains  
6 Confidential Information, including without limitation any brief or memorandum,  
7 must do so pursuant to Rule 26(c), Federal Rules of Civil Procedure and the  
8 provisions of this Paragraph.

9 a. A party seeking to file any document or thing that contains  
10 Confidential Information shall bring an ex parte application requesting that  
11 the Court file such documents under seal. If the information requested to be  
12 filed under seal has previously been designated as Confidential Information  
13 pursuant to this Protective Order, and no one has successfully challenged  
14 such designation, then no party shall file an objection or opposition to the ex  
15 parte application.

16 b. Any Material designated confidential sought to be filed with the  
17 Court should be lodged with ex parte application, unless otherwise ordered.

18 c. Materials lodged pursuant to these provisions shall be lodged in  
19 a sealed envelope marked with the caption of the case and the following  
20 notation:



**Contains Confidential Information  
Subject to a Motion to File the Record Under Seal  
Pursuant to Rule 26(c), Federal Rules of Civil Procedure  
To Be Only Opened By  
Or As Directed By The Court  
CONDITIONALLY UNDER SEAL**

d. Pending determination of the ex parte application, the lodged Material shall remain under seal.

e. If the Court grants ex parte application, then the Material designated as Confidential Information shall be sealed and the Court Clerk shall substitute on the envelope containing the Confidential Information the following label:

**Contains Confidential Information  
Filed Under Seal Pursuant To Court Order  
To Be Opened By Or As Directed By The Court**

f. A copy of this Protective Order shall be submitted with the lodged Materials.

g. Additional Information or Changes:

(i) Any party filing Confidential material with the Court (whether in pleadings, declarations, exhibits, or otherwise) will first if feasible determine, prior to filing any motion to seal, and in consultation with the designating party, as appropriate, whether the document may be filed in redacted form. If, however, redaction is not feasible based on the nature of the document or

1 the purpose of it being submitted to the Court, either prior to or contemporaneously  
2 with filing these documents in a sealed manner, the party relying on the document  
3 shall file a motion to seal any Confidential material, regardless of which party has  
4 designated the materials as such. Such a motion to seal shall be noted for  
5 consideration after filing in accordance with LR 7.1. The party filing the motion to  
6 seal shall include an explanation justifying sealing the designated documents. If  
7 any documents or information included in the court filing were designated or  
8 Confidential by a non-moving party, that party may file a response in support of  
9 the motion to seal no later than two (2) judicial days before the hearing date  
10 showing why such materials should also be sealed.

11 (ii) If the Court denies a motion to seal documents containing  
12 Confidential material, the sealed document will be unsealed unless the Court  
13 orders otherwise, or unless the party filing such material, after notifying the  
14 opposing party within two (2) judicial days of the Court's order, files a notice to  
15 withdraw the documents.

16 10. Should the need arise during any hearing before the Court for any  
17 party to disclose Confidential Information, it may do so only in camera or after  
18 other appropriate safeguards are provided by the Court.

19 11. A person with custody of Confidential Information shall maintain it in  
20 a manner that ensures that access to Confidential Information is strictly limited to

1 persons entitled to receive Confidential Information in accordance with this  
2 Protective Order.

3 12. In the event that any party to this Agreement, or any of their attorneys  
4 or representatives, receives a subpoena or other process or order to produce  
5 Confidential Information produced by the adverse party in another action or  
6 proceeding, that party or their attorneys shall, no later than 14 days prior to  
7 compliance with the subpoena or other process or order notify the attorneys later  
8 than 14 days prior to compliance with the subpoena or other process or order notify  
9 the attorneys of record for adverse party and specify the information sought by the  
10 subpoena or other process or order.

11 13. This Protective Order shall not abrogate or diminish any contractual,  
12 statutory, or other legal obligation or right of any party or person with respect to  
13 any Confidential Information.

14 14. This stipulation may be signed in counterparts. A facsimile signature  
15 shall bear the same force and effect as an original signature.

16 15. This Order shall be without prejudice to the right of any party to  
17 oppose protection of any information or object to its admissibility into evidence.

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1 The District Court Clerk shall enter this order and furnish copies to counsel.

2 Dated November 23, 2015.



*Thomas O. Rice*  
THOMAS O. RICE  
United States District Judge

**EXHIBIT “A”**

**AGREEMENT TO BE BOUND BY PROTECTIVE ORDER**

The undersigned \_\_\_\_\_ [print or type name], hereby acknowledges that he or she has received a copy of the Stipulation and Protective Order entered in connection with the actions pending in United States District Court, Eastern District of Washington: TREE TOP, INC., a Washington corporation, Plaintiff vs. NATURIPE FOODS, LLC, a Delaware domestic limited liability company, Defendant, Case No. 14-2-02036-7., has read it, understands the limitations it imposes on the sue and disclosure of material or information designated as “Confidential Information”, and agrees to be bound by all its provisions.

The undersigned understands that all Confidential Information as defined in this Protective Order, including without limitation, all copies thereof or notes made there from, shall be maintained in a secure manner and shall be returned no later than 30 days after the termination of this action to the counsel for the party or other person who provided such Confidential Information.

\_\_\_\_\_  
Date:\_\_\_\_\_